



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 28 2005

CERTIFIED MAIL # 7004 2510 0000 3548 9260
RETURN RECEIPT REQUESTED

Mr. James L. Riney, Registered Agent
Texas Mexican Railway Company
P.O. Box 419
1200 Washington Street
Laredo, TX 78040

Re: Texas Mexican Railway Company
Complaint, Compliance Order, and
Notice of Opportunity for Hearing

Dear Mr. Riney:

The enclosed document is a Complaint, Compliance Order, and Notice of Opportunity for Hearing (complaint) alleging violations of the Hazardous Waste Regulations of the Texas Administrative Code. Texas Mexican Railway Company (Texas Mexican) should carefully read the complaint soon, since it describes its rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Consolidated Rules of Practice that govern these proceedings, as well as an information sheet about the Small Business Regulatory Fairness Act.

Texas Mexican is required to take action within 30 calendar days of your receipt of this Order to avoid the possibility of having a default judgment entered against it and the imposition of the penalty amount proposed in the complaint.

Whether or not Texas Mexican requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Texas Mexican may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Texas Mexican should contact Jim Eppers, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.



If Texas Mexican has technical questions relating to this matter, the person most knowledgeable on my staff is Eric Johnson, Technical Enforcement Program, at 1-800-227-8917 ext. 6357 or (303) 312-6357. For legal questions, the person most knowledgeable on my staff is Jim Eppers at 1-800-227-8917 ext. 6893 or (303) 312-6893. Mr. Johnson and Mr. Eppers can also be reached at the following addresses:

Eric Johnson (Mail Code 8ENF-RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466, or

Jim Eppers (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466.

We urge Texas Mexican's prompt attention to this matter.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Proposed Administrative Order
and Opportunity to Request Hearing
40 C.F.R. Part 22
U.S. EPA Small Business Resources Fact Sheet

cc: Chester Cully, Kansas City Southern Railway (certified, with all enclosures)
Rose Luna-Pirtle, TCEQ (with all enclosures)

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2005 SEP 28 PM 3: 27

Docket No. RCRA-08-2005-0003

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

Texas Mexican Railway Company,
a Texas corporation

Respondent.

)
)
) **COMPLAINT, COMPLIANCE ORDER,**
) **AND NOTICE OF OPPORTUNITY FOR**
) **HEARING**
)

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 3008(a) of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act of 1976, as amended (RCRA or the Act), 42 U.S.C. § 6928(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.
2. The undersigned Region 8 United States Environmental Protection Agency (EPA) official has been properly delegated the authority to issue this Complaint, Compliance Order, and Notice of Opportunity for Hearing (complaint).
3. EPA alleges that Texas Mexican Railway Company (Respondent) has violated the Texas Administrative Code and proposes the assessment of a civil penalty and compliance measures, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint, the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have.
5. To disagree with the complaint and assert its right to a hearing, Respondent must file a written answer (and one copy) with the Region 8 Hearing Clerk at the following address:

Region 8 Hearing Clerk
999 18th Street; Suite 300 (8RC)
Denver, Colorado 80202

within 30 calendar days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by complying with the requirements of paragraphs 21 and 22 below and paying the penalty amount proposed in the complaint. Such action to comply and make payment need not contain any response to, or admission of, the allegations in the complaint. However, such action to comply and make payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Consolidated Rules of Practice for a full explanation of the quick resolution process. Payment of the penalty in this matter does not relieve respondent of its obligation to perform the activities required by the compliance order.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact James Eppers, Senior Enforcement Attorney, at [1-800-227-8917 extension 6893 or 303-312-6893] or at the address identified in paragraph 18 herein. **Please note that calling Mr. Eppers or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action:

8. On September 11, 2000, pursuant to authority under section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the U.S. EPA Administrator granted to the State of Texas final authorization to administer and enforce a hazardous waste program under RCRA. Under

1 the Texas Solid Waste Disposal Act (codified in chapter 361 of the Texas Health and
2 Safety Code), the Texas Natural Resource Conservation Commission (TNRCC) has
3 primary responsibility for administration of laws and regulations concerning hazardous
4 waste. 65 Fed. Reg., No. 135, pg. 43247 (July 13, 2000).

- 5
6 9. Pursuant to sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g)
7 and 6926(g), EPA may enforce the federally approved Texas hazardous waste program by
8 issuing an order assessing a civil penalty for any past or current violations of RCRA and
9 requiring immediate compliance.
- 10
11 10. The U.S. EPA has provided notice to the State of Texas of this complaint, and the
12 administrative action proposed.
- 13
14 11. On October 15, 1982, Texas Mexican Railway Company submitted a notification of
15 hazardous waste activity to U.S. EPA in accordance with the requirements of section
16 3010(a) of RCRA, 42 U.S.C. § 6930(a). In this notification, Texas Mexican Railway
17 Company identified itself as a transporter of hazardous waste.
- 18
19 12. Section 335.11(g)(1) of the Texas Administrative Code provides, in part, that transporters
20 who transport hazardous waste out of the United States shall indicate on the manifest,
21 required by section 335.11 of the Texas Administrative Code, the date the hazardous
22 waste left the United States.
- 23
24 13. Between September 28, 2000 and July 29, 2003, Respondent accepted from CF&I Steel,
25 L.P. d/b/a Rocky Mountain Steel Mills hundreds of shipments of hazardous waste, as
26 defined in section 1004(5) of RCRA, 42. U.S.C. § 6903(5) and title 30, part 1, chapter
27 335, subchapter R, rule 335.504(2) of the Texas Administrative Code, each accompanied
28 by a specific manifest, as required by section 335.10 of the Texas Administrative Code,
29 and transported each specifically identified load of hazardous waste outside the United
30 States and into Mexico.
- 31
32 14. Attachment 1 is enclosed and incorporated herein and lists the manifests on which
33 Respondent failed to identify the date the hazardous waste left the United States.
- 34
35 15. The Respondent is Texas Mexican Railway Company, which is and was at all times
36 relevant to this complaint a statutory corporation incorporated in 1875 under the law of
37 the State of Texas, and the owner and operator of a railway between the Kansas City
38 Southern Railway Company at Beaumont, Texas and TFM, S.A. de E.V. at Nuevo
39 Laredo, Mexico.
- 40
41 16. Respondent is a "person" as defined at section 1004(15) of RCRA, 42 U.S.C. § 6903(15)
42 and title 30 part 1 chapter 3 rule §3.2 (25) of the Texas Administrative Code.
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4 17. Respondent violated section 335.11(g)(1) of the Texas Administrative Code for failing,
5 on numerous occasions, to indicate on the manifest the date the hazardous waste left the
6 United States. Each such manifest represents a separate violation of a U.S. EPA
7 authorized State hazardous waste program, and consequently, a violation of subchapter III
8 of RCRA, 42 U.S.C. § 6921, et.al., subjecting Respondent to the assessment of civil
9 penalties, as provided for in section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Attachment
10 1 to this complaint lists each of those manifests with the omission.
11

12
13 **PROPOSED CIVIL PENALTY**
14

- 15 18. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes EPA to assess a civil
16 penalty of up to \$25,000 per day for each violation whenever a person violates any
17 requirement of subchapter III of RCRA, 42 U.S.C. § 6921, et. al. This amount increases
18 to \$27,500 per day for violations occurring on and after January 31, 1997 (See 40 C.F.R.
19 part 19) and further increases to \$32,500 per day for each violation occurring on or after
20 March 16, 2004. The Act requires EPA to take into account the following factors in
21 assessing a civil penalty: the seriousness of the violation and any good faith efforts of the
22 Respondent to comply with applicable statutory and regulatory requirements.
23 42 U.S.C. § 6928(a)(3). The penalty proposed below takes into account the statutory
24 factors and was calculated in accordance with EPA's RCRA Civil Penalty Policy (June
25 2003). This policy is used by EPA to provide a rational and consistent application of the
26 statutory factors to the facts and circumstances of a specific case. The reasoning behind
27 this penalty is detailed in the penalty calculation for this case, incorporated herein and
28 enclosed as Attachment 2.
29
30 19. In light of the statutory factors and the specific facts of this case, Complainant proposes
31 that Respondent be assessed a civil penalty of forty-three thousand and ten dollars
32 (\$43,010) for the violations alleged in this Complaint as explained below:
33

34 Respondent shall pay this penalty by certified check or money order, payable to
35 "Treasurer, the United States of America," and remit to:
36

37 U.S. Environmental Protection Agency, Region 8
38 (Regional Hearing Clerk)
39 P.O. Box 360859M
40 Pittsburgh, PA 15251.
41
42
43

1 A copy of the check shall be sent to:

2
3 Regional Hearing Clerk
4 U.S. Environmental Protection Agency, Region 8
5 999 18th Street, Suite 300
6 Denver, Colorado 80202-2466

7
8 and

9
10 James H. Eppers 8ENF-L
11 Legal Enforcement Program
12 U.S. Environmental Protection Agency, Region 8
13 999 18th Street, Suite 300
14 Denver, Colorado 80202-2466.

15
16 A transmittal letter identifying this complaint shall accompany the remittance and the
17 copy of the check.

- 18 19. The administrative law judge is not bound by EPA's penalty policy or the penalty
19 proposed by EPA, and may assess a penalty above the proposed amount, up to the
20 \$27,500 per day per violation authorized in the statute.
21

22
23 **RESERVATION OF RIGHTS**

- 24
25 20. This complaint does not constitute a waiver, suspension, or modification of the
26 requirements of any applicable provision of the Act or the RCRA regulations
27 implementing the Act, which remain in full force and effect. Issuance of this complaint is
28 not an election by the EPA to forego any civil or any criminal action otherwise authorized
29 under the Act.
30

31 **COMPLIANCE ORDER**

- 32
33 21. Pursuant to authority under section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent
34 is hereby ordered to immediately, and at all times, comply with section 335.11(g)(1) of
35 the Texas Administrative Code.
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1 22. Within thirty (30) days of receipt of this Complaint, Compliance Order, and Notice of
2 Opportunity for Hearing, Respondent shall submit to EPA a written, detailed description
3 of the steps that will be taken to ensure Respondent's future compliance with Section
4 335.11(g)(1) of the Texas Administrative Code (accompanied by a copy of any
5 appropriate supporting documentation), and written confirmation of its compliance with
6 those requirements. The submission referred to above shall be sent to :
7

8 Eric Johnson 8ENF-RC
9 Technical Enforcement Program
10 U. S. Environmental Protection Agency, Region 8
11 999 18th Street Suite 300
12 Denver, CO 80202-2466.
13

14 Issued this 28th day of September, 2005.
15
16

17 
18

19 Carol Rushin
20 Assistant Regional Administrator
21 Office of Enforcement, Compliance,
22 and Environmental Justice
23 U.S. EPA, Region 8
24 999 18th Street, Suite 300
25 Denver, CO 80202-2466

ATTACHMENT 1
Violations of Manifest Requirements
Texas Regulation: TX Administrative Code
Title 30, Part 1, Chapter 335
Subchapter A, Rule 335.11(g) (1)

	Transporter #3	Date Shipped	Manifest Number
1.	Texas Mexican Railway Co.	09/28/00	CO 00916
2.	Texas Mexican Railway Co.	09/28/00	CO 00917
3.	Texas Mexican Railway Co.	09/28/00	CO 00918
4.	Texas Mexican Railway Co.	10/03/00	CO 00919
5.	Texas Mexican Railway Co.	10/03/00	CO 00920
6.	Texas Mexican Railway Co.	10/05/00	CO 00921
7.	Texas Mexican Railway Co.	10/05/00	CO 00922
8.	Texas Mexican Railway Co.	10/09/00	CO 00923
9.	Texas Mexican Railway Co.	10/09/00	CO 00924
10.	Texas Mexican Railway Co.	10/16/00	CO 00925
11.	Texas Mexican Railway Co.	10/16/00	CO 00926
12.	Texas Mexican Railway Co.	10/18/00	CO 00927
13.	Texas Mexican Railway Co.	10/18/00	CO 00928
14.	Texas Mexican Railway Co.	10/24/00	CO 00930
15.	Texas Mexican Railway Co.	10/26/00	CO 00931
16.	Texas Mexican Railway Co.	10/26/00	CO 00932
17.	Texas Mexican Railway Co.	10/31/00	CO 00933
18.	Texas Mexican Railway Co.	10/31/00	CO 00934
19.	Texas Mexican Railway Co.	11/02/00	CO 00936
20.	Texas Mexican Railway Co.	11/07/00	CO 00937
21.	Texas Mexican Railway Co.	11/08/00	CO 00938
22.	Texas Mexican Railway Co.	11/08/00	CO 00939
23.	Texas Mexican Railway Co.	11/10/00	CO 00940
24.	Texas Mexican Railway Co.	11/10/00	CO 00941
25.	Texas Mexican Railway Co.	11/15/00	CO 00943
26.	Texas Mexican Railway Co.	11/21/00	CO 00944
27.	Texas Mexican Railway Co.	11/21/00	CO 00945
28.	Texas Mexican Railway Co.	11/27/00	CO 00946
29.	Texas Mexican Railway Co.	11/27/00	CO 00947
30.	Texas Mexican Railway Co.	11/27/00	CO 00948
31.	Texas Mexican Railway Co.	11/27/00	CO 00949
32.	Texas Mexican Railway Co.	11/30/00	CO 00951
33.	Texas Mexican Railway Co.	12/08/00	CO 00952
34.	Texas Mexican Railway Co.	12/08/00	CO 00953
35.	Texas Mexican Railway Co.	12/08/00	CO 00954
36.	Texas Mexican Railway Co.	12/12/00	CO 00955
37.	Texas Mexican Railway Co.	12/15/00	CO 00957
38.	Texas Mexican Railway Co.	12/18/00	CO 00958
39.	Texas Mexican Railway Co.	12/21/00	CO 00959
40.	Texas Mexican Railway Co.	12/21/00	CO 00960

41.	Texas Mexican Railway Co.	12/21/00	CO 00961
42.	Texas Mexican Railway Co.	12/21/00	CO 00962
43.	Texas Mexican Railway Co.	12/28/00	CO 00963
44.	Texas Mexican Railway Co.	12/28/00	CO 00964
45.	Texas Mexican Railway Co.	01/08/01	CO 01801
46.	Texas Mexican Railway Co.	01/08/01	CO 01802
47.	Texas Mexican Railway Co.	01/09/01	CO 01803
48.	Texas Mexican Railway Co.	01/09/01	CO 01804
49.	Texas Mexican Railway Co.	01/16/01	CO 01805
50.	Texas Mexican Railway Co.	01/16/01	CO 01806
51.	Texas Mexican Railway Co.	01/17/01	CO 01807
52.	Texas Mexican Railway Co.	01/17/01	CO 01808
53.	Texas Mexican Railway Co.	01/23/01	CO 01809
54.	Texas Mexican Railway Co.	01/23/01	CO 01810
55.	Texas Mexican Railway Co.	01/23/01	CO 01811
56.	Texas Mexican Railway Co.	01/23/01	CO 01812
57.	Texas Mexican Railway Co.	01/29/01	CO 01813
58.	Texas Mexican Railway Co.	01/29/01	CO 01814
59.	Texas Mexican Railway Co.	01/31/01	CO 01815
60.	Texas Mexican Railway Co.	01/31/01	CO 01816
61.	Texas Mexican Railway Co.	02/09/01	CO 01819
62.	Texas Mexican Railway Co.	02/09/01	CO 01820
63.	Texas Mexican Railway Co.	02/12/01	CO 01821
64.	Texas Mexican Railway Co.	02/12/01	CO 01822
65.	Texas Mexican Railway Co.	02/16/01	CO 01823
66.	Texas Mexican Railway Co.	02/16/01	CO 01824
67.	Texas Mexican Railway Co.	02/28/01	CO 01825
68.	Texas Mexican Railway Co.	02/28/01	CO 01826
69.	Texas Mexican Railway Co.	03/07/01	CO 01827
70.	Texas Mexican Railway Co.	03/07/01	CO 01828
71.	Texas Mexican Railway Co.	03/09/01	CO 01829
72.	Texas Mexican Railway Co.	03/09/01	CO 01830
73.	Texas Mexican Railway Co.	03/19/01	CO 01831
74.	Texas Mexican Railway Co.	03/19/01	CO 01832
75.	Texas Mexican Railway Co.	03/21/01	CO 01833
76.	Texas Mexican Railway Co.	03/21/01	CO 01834
77.	Texas Mexican Railway Co.	03/21/01	CO 01835
78.	Texas Mexican Railway Co.	03/21/01	CO 01836
79.	Texas Mexican Railway Co.	03/26/01	CO 01838
80.	Texas Mexican Railway Co.	04/06/01	CO 01840
81.	Texas Mexican Railway Co.	04/11/01	CO 01841
82.	Texas Mexican Railway Co.	04/11/01	CO 01842
83.	Texas Mexican Railway Co.	04/16/01	CO 01843
84.	Texas Mexican Railway Co.	04/16/01	CO 01844
85.	Texas Mexican Railway Co.	04/20/01	CO 01845
86.	Texas Mexican Railway Co.	04/20/01	CO 01846
87.	Texas Mexican Railway Co.	04/23/01	CO 01847
88.	Texas Mexican Railway Co.	04/23/01	CO 01848

89.	Texas Mexican Railway Co.	04/27/01	CO 01849
90.	Texas Mexican Railway Co.	04/27/01	CO 01850
91.	Texas Mexican Railway Co.	05/08/01	CO 01851
92.	Texas Mexican Railway Co.	05/08/01	CO 01852
93.	Texas Mexican Railway Co.	05/09/01	CO 01853
94.	Texas Mexican Railway Co.	05/09/01	CO 01854
95.	Texas Mexican Railway Co.	05/11/01	CO 01855
96.	Texas Mexican Railway Co.	05/11/01	CO 01856
97.	Texas Mexican Railway Co.	05/15/01	CO 01858
98.	Texas Mexican Railway Co.	05/21/01	CO 01859
99.	Texas Mexican Railway Co.	05/24/01	CO 01860
100.	Texas Mexican Railway Co.	05/24/01	CO 01961
101.	Texas Mexican Railway Co.	05/29/01	CO 01863
102.	Texas Mexican Railway Co.	05/29/01	CO 01864
103.	Texas Mexican Railway Co.	05/29/01	CO 01865
104.	Texas Mexican Railway Co.	06/01/01	CO 01866
105.	Texas Mexican Railway Co.	06/01/01	CO 01867
106.	Texas Mexican Railway Co.	06/04/01	CO 01868
107.	Texas Mexican Railway Co.	06/04/01	CO 01869
108.	Texas Mexican Railway Co.	06/08/01	CO 01870
109.	Texas Mexican Railway Co.	06/08/01	CO 01871
110.	Texas Mexican Railway Co.	06/12/01	CO 01872
111.	Texas Mexican Railway Co.	06/12/01	CO 01873
112.	Texas Mexican Railway Co.	06/18/01	CO 01875
113.	Texas Mexican Railway Co.	06/22/01	CO 01876
114.	Texas Mexican Railway Co.	06/22/01	CO 01877
115.	Texas Mexican Railway Co.	06/25/01	CO 01878
116.	Texas Mexican Railway Co.	06/25/01	CO 01879
117.	Texas Mexican Railway Co.	07/02/01	CO 01880
118.	Texas Mexican Railway Co.	07/02/01	CO 01881
119.	Texas Mexican Railway Co.	07/12/01	CO 01882
120.	Texas Mexican Railway Co.	07/12/01	CO 01883-1
121.	Texas Mexican Railway Co.	07/10/01	CO 01883
122.	Texas Mexican Railway Co.	07/10/01	CO 01884
123.	Texas Mexican Railway Co.	07/10/01	CO 01885
124.	Texas Mexican Railway Co.	07/17/01	CO 01886
125.	Texas Mexican Railway Co.	07/17/01	CO 01887
126.	Texas Mexican Railway Co.	07/18/01	CO 01888
127.	Texas Mexican Railway Co.	07/23/01	CO 01890
128.	Texas Mexican Railway Co.	07/25/01	CO 01891
129.	Texas Mexican Railway Co.	07/25/01	CO 01892
130.	Texas Mexican Railway Co.	08/01/01	CO 01893
131.	Texas Mexican Railway Co.	08/01/01	CO 01894
132.	Texas Mexican Railway Co.	08/06/01	CO 01895
133.	Texas Mexican Railway Co.	08/06/01	CO 01896
134.	Texas Mexican Railway Co.	08/10/01	CO 01897
135.	Texas Mexican Railway Co.	08/10/01	CO 01898
136.	Texas Mexican Railway Co.	08/13/01	CO 01899

137.	Texas Mexican Railway Co.	08/13/01	CO 01900
138.	Texas Mexican Railway Co.	08/20/01	CO 01901
139.	Texas Mexican Railway Co.	08/20/01	CO 01902
140.	Texas Mexican Railway Co.	08/23/01	CO 01903
141.	Texas Mexican Railway Co.	08/23/01	CO 01904
142.	Texas Mexican Railway Co.	08/28/01	CO 01905
143.	Texas Mexican Railway Co.	08/28/01	CO 01906
144.	Texas Mexican Railway Co.	08/30/01	CO 01908
145.	Texas Mexican Railway Co.	09/05/01	CO 01909
146.	Texas Mexican Railway Co.	09/05/01	CO 01910
147.	Texas Mexican Railway Co.	09/07/01	CO 01911
148.	Texas Mexican Railway Co.	09/07/01	CO 01912
149.	Texas Mexican Railway Co.	09/17/01	CO 01913
150.	Texas Mexican Railway Co.	09/17/01	CO 01914
151.	Texas Mexican Railway Co.	09/19/01	CO 01915
152.	Texas Mexican Railway Co.	09/19/01	CO 01916
153.	Texas Mexican Railway Co.	09/26/01	CO 01916-1
154.	Texas Mexican Railway Co.	09/26/01	CO 01917
155.	Texas Mexican Railway Co.	09/26/01	CO 01918
156.	Texas Mexican Railway Co.	09/26/01	CO 01919
157.	Texas Mexican Railway Co.	09/28/01	CO 01920
158.	Texas Mexican Railway Co.	09/28/01	CO 01921
159.	Texas Mexican Railway Co.	10/03/01	CO 01922
160.	Texas Mexican Railway Co.	10/03/01	CO 01923
161.	Texas Mexican Railway Co.	10/10/01	CO 01924
162.	Texas Mexican Railway Co.	10/10/01	CO 01925
163.	Texas Mexican Railway Co.	10/12/01	CO 01926
164.	Texas Mexican Railway Co.	10/12/01	CO 01927
165.	Texas Mexican Railway Co.	10/07/01	CO 01929
166.	Texas Mexican Railway Co.	10/18/01	CO 01930
167.	Texas Mexican Railway Co.	10/18/01	CO 01931
168.	Texas Mexican Railway Co.	10/22/01	CO 01932
169.	Texas Mexican Railway Co.	10/22/01	CO 01933
170.	Texas Mexican Railway Co.	10/29/01	CO 01934
171.	Texas Mexican Railway Co.	11/05/01	CO 01935
172.	Texas Mexican Railway Co.	11/05/01	CO 01936
173.	Texas Mexican Railway Co.	11/05/01	CO 01937
174.	Texas Mexican Railway Co.	11/05/01	CO 01938
175.	Texas Mexican Railway Co.	11/05/01	CO 01939
176.	Texas Mexican Railway Co.	11/05/01	CO 01940
177.	Texas Mexican Railway Co.	11/08/01	CO 01941
178.	Texas Mexican Railway Co.	11/08/01	CO 01942
179.	Texas Mexican Railway Co.	11/12/01	CO 01943
180.	Texas Mexican Railway Co.	11/15/01	CO 01944
181.	Texas Mexican Railway Co.	11/15/01	CO 01945
182.	Texas Mexican Railway Co.	11/15/01	CO 01946
183.	Texas Mexican Railway Co.	11/27/01	CO 01948
184.	Texas Mexican Railway Co.	11/27/01	CO 01949

185.	Texas Mexican Railway Co.	11/27/01	CO 01950
186.	Texas Mexican Railway Co.	11/27/01	CO 01951
187.	Texas Mexican Railway Co.	11/30/01	CO 01952
188.	Texas Mexican Railway Co.	11/30/01	CO 01953
189.	Texas Mexican Railway Co.	12/05/01	CO 01954
190.	Texas Mexican Railway Co.	12/05/01	CO 01955
191.	Texas Mexican Railway Co.	12/11/01	CO 01956
192.	Texas Mexican Railway Co.	12/11/01	CO 01957
193.	Texas Mexican Railway Co.	12/14/01	CO 01958
194.	Texas Mexican Railway Co.	12/14/01	CO 01959
195.	Texas Mexican Railway Co.	12/17/01	CO 01960
196.	Texas Mexican Railway Co.	12/17/01	CO 01961
197.	Texas Mexican Railway Co.	12/18/01	CO 01962
198.	Texas Mexican Railway Co.	12/18/01	CO 01963
199.	Texas Mexican Railway Co.	12/21/01	CO 01965
200.	Texas Mexican Railway Co.	12/31/01	CO 01966
201.	Texas Mexican Railway Co.	12/31/01	CO 01967
202.	Texas Mexican Railway Co.	01/02/02	CO 02801
203.	Texas Mexican Railway Co.	01/02/02	CO 02802
204.	Texas Mexican Railway Co.	01/07/02	CO 02803
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208.	Texas Mexican Railway Co.	01/11/02	CO 02807
209.	Texas Mexican Railway Co.	01/11/02	CO 02808
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211.	Texas Mexican Railway Co.	01/16/02	CO 02810
212.	Texas Mexican Railway Co.	01/22/02	CO 02811
213.	Texas Mexican Railway Co.	01/22/02	CO 02812
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215.	Texas Mexican Railway Co.	01/24/02	CO 02814
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218.	Texas Mexican Railway Co.	01/31/02	CO 02818
219.	Texas Mexican Railway Co.	01/31/02	CO 02819
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221.	Texas Mexican Railway Co.	02/06/02	CO 02821
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250.	Texas Mexican Railway Co.	04/03/02	CO 02851
251.	Texas Mexican Railway Co.	04/03/02	CO 02852
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280.	Texas Mexican Railway Co.	06/05/02	CO 02881

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329.	Texas Mexican Railway Co.	09/11/02	CO 02931
330.	Texas Mexican Railway Co.	09/17/02	CO 02932
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354.	Texas Mexican Railway Co.	12/19/02	CO 02978
355.	Texas Mexican Railway Co.	12/29/02	CO 02979
356.	Texas Mexican Railway Co.	12/29/02	CO 02980
357.	Texas Mexican Railway Co.	12/30/02	CO 02981
358.	Texas Mexican Railway Co.	12/30/02	CO 02982
369.	Texas Mexican Railway Co.	01/03/03	CO 03801
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362.	Texas Mexican Railway Co.	01/13/03	CO 03804
363.	Texas Mexican Railway Co.	01/13/03	CO 03805
364.	Texas Mexican Railway Co.	01/17/03	CO 03806
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366.	Texas Mexican Railway Co.	01/20/03	CO 03808
367.	Texas Mexican Railway Co.	01/20/03	CO 03809
368.	Texas Mexican Railway Co.	01/22/03	CO 03810
369.	Texas Mexican Railway Co.	01/22/03	CO 03811
370.	Texas Mexican Railway Co.	01/27/03	CO 03812
371.	Texas Mexican Railway Co.	01/28/03	CO 03813
372.	Texas Mexican Railway Co.	01/28/03	CO 03814
373.	Texas Mexican Railway Co.	02/04/03	CO 03815
374.	Texas Mexican Railway Co.	02/04/03	CO 03816
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376.	Texas Mexican Railway Co.	02/04/03	CO 03818

377.	Texas Mexican Railway Co.	02/10/03	CO 03819
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379.	Texas Mexican Railway Co.	02/14/03	CO 03821
380.	Texas Mexican Railway Co.	02/18/03	CO 03822
381.	Texas Mexican Railway Co.	02/18/03	CO 03823
382.	Texas Mexican Railway Co.	02/18/03	CO 03824
383.	Texas Mexican Railway Co.	02/21/03	CO 03825
384.	Texas Mexican Railway Co.	02/21/03	CO 03826
385.	Texas Mexican Railway Co.	02/26/03	CO 03827
386.	Texas Mexican Railway Co.	03/05/03	CO 03827
387.	Texas Mexican Railway Co.	07/15/03	CO 03886
388.	Texas Mexican Railway Co.	07/15/03	CO 03887
389.	Texas Mexican Railway Co.	07/29/03	CO 03893

ATTACHMENT 2
NARRATIVE EXPLANATION TO SUPPORT \$43,010 PENALTY FOR:
TEXAS MEXICAN RAILWAY COMPANY

Pursuant to Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. § 6928(a)(3) and (g), EPA proposes the assessment of a civil penalty in the amount of \$43,010 against Texas Mexican Railway Company ("Respondent") for the following violation:

VIOLATION #1 -

The Respondent violated Texas Administrative Code, Title 30, Part 1, Chapter 335, Subchapter A, Rule 335.11(g)(1) by failing to provide on 389 manifests (block #15) the date hazardous waste left the United States to a foreign source (Mexico).

1. Gravity Based Penalty: \$330

Potential for Harm: Minor - Respondent's failure to provide the date on 389 manifests for hazardous waste shipped to a foreign source constitutes a minor harm to the integrity of the RCRA program. By signing manifests with the specified date that hazardous waste left the United States, facilities demonstrate to EPA that they are properly managing hazardous wastes from cradle-to-grave, and are properly implementing the record-keeping aspect of the RCRA requirements. The Respondent's failure to date manifests has a minor adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

Extent of Deviation: Minor - By failing to date manifests when hazardous waste left the United States, the Respondent deviated from the regulatory requirements. Based on manifests reviewed, the Respondent has implemented some of the record-keeping requirements as intended (i.e., signing and dating manifests after receipt of hazardous waste from the first transporter), but failed to provide the required date that hazardous wastes were shipped to a foreign source.

The Revised RCRA Civil Penalty Policy penalty assessment matrix provides a range of penalty amounts in the minor potential for harm/minor extent of deviation category. The penalty amounts range from \$110 to \$549 for the first-day gravity-based component. This violation was assessed \$330 for the first-day gravity-based penalty.

2. Multiple/Multi-day Penalty: \$42,680

A multi-day penalty was assessed for a total period of 388 days of violation of these regulations (389 days of violation minus one(1)). The Respondent was found to be in violation of record-keeping aspects of the RCRA requirements. This violation

was found during 389 shipments of hazardous wastes between the time period September 28, 2000 through July 29, 2003.

The Revised RCRA Civil Penalty Policy penalty assessment matrix provides a fixed penalty amount in the minor potential for harm/minor extent of deviation multiple/multi-day category. The penalty amount is \$110. Multi-day penalties are discretionary for days 2-389 of violations designated minor/minor. This violation was assessed using \$330 for the gravity based penalty and \$110 for the multi-day penalty. The multi-day penalty was calculated as follows: 388 days of violation x \$110 = \$42,680.

3. Adjustment Factors

The information currently available to EPA does not justify use of discretionary adjustment factors to modify the assessed penalty amount. No evidence has been produced which indicates either the demonstration, or lack of good faith, willingness, negligence, or a history of noncompliance with respect to the same violation.

4. Economic Benefit

The Facility appears to have gained no economic benefit from this violation; i.e., the benefit, if any, was less than \$2,500.

5. Penalty

\$ 43,010

PREPARED BY:

Eric R. Johnson
Eric R. Johnson
Environmental Scientist
Technical Enforcement Program

9/27/05
Date

PENALTY COMPUTATION WORKSHEET

Company Name: Texas Mexican Railway Company
Company Address: P.O. Box 419
1200 Washington Street
Laredo, Texas 78040

Regulation Violated: TX Admin. Code, Title 30, Part 1,
Chapter 335, Subchapter A, Rule
335.11(g) (1)
Requirement Violated: Failure to indicate on manifests the
date hazardous waste left the United
States

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix..... \$330
 - (a) Potential for harm..... minor
 - (b) Extent of deviation..... minor
2. Select an amount from the appropriate multi-day
matrix cell..... \$110
3. Multiply line 2 by number of days of violation
minus 1..... $\$110 \times 388$
 $= \$42,680$
4. Add line 1 and line 3..... \$43,010
5. Percent decrease for good faith..... N/A
6. Percent increase for willfulness/negligence..... N/A
7. Percent increase for history of noncompliance... N/A
8. Total lines 5 through 7..... N/A
9. Multiply line 4 by line 8..... N/A
10. Calculate economic benefit..... N/A
11. Add lines 4, 9 and 10 for penalty amount to be
inserted into the complaint..... \$43,010

Texas Mexican Railway Company
Docket No. RCRA-08-2005-0003

CERTIFICATE OF SERVICE

I hereby certify that the original and one true copy of this Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that true copies were sent Certified Mail; Return Receipt Requested to:

Mr. James L. Riney, Registered Agent
Texas Mexican Railway Company
P.O. Box 419
1200 Washington Street
Laredo, TX 78040

and

Chester Culley
General Director
Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64121-9335.

Dated: 9/28/05

By: Judith McTernan
Judith McTernan



Protection of Environment

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Fees and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

1st Page
Only
Pt. 22

addendum to 7-1-2004 Part 22

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR PART 22

[FRL-7855-6]

**Clarification of Address for Documents
Filed With EPA's Environmental
Appeals Board**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulations that pertain to filing appeals and other documents with the Environmental Appeals Board (EAB) under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP). Specifically, EPA is amending two regulations that specify the addresses where notices of appeal, accompanying briefs, and other documents must be filed, to provide that any filings made through the U.S. mail service must be addressed to the EAB's mailing address, and that any filings made by hand-delivery or courier must be made to the EAB's hand-delivery address. The amendments are intended to make the regulations consistent with current Agency practice and to provide clear guidance on the proper address to use under various circumstances.

EFFECTIVE DATE: This final rule is effective on December 28, 2004.

FOR FURTHER INFORMATION CONTACT:
Eurika Durr, Clerk of the Board.
Telephone number: (202) 233-0122. E-mail: Durr.Eurika@epa.gov.

SUPPLEMENTARY INFORMATION: This action is directed to the public in